

Message Text

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ACTION EB-08

INFO OCT-01 NEA-10 ISO-00 /019 W
-----130952Z 050920 /12

R 130747Z APR 77
FM AMEMBASSY TUNIS
TO SECSTATE WASHDC 6395
INFO USDOC WASHDC

UNCLAS SECTION 1 OF 2 TUNIS 2530

USDOC FOR CAGNE

E.O. 11652: N/A
TAGS: BEXP, BENC, BGEN, TS
SUBJ: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES
IN TUNISIA

REF: 76 STATE A-5955

1. FOLLOWING RESPONSES ON TUNISIA ARE CODED TO QUESTIONS
POSED IN REFTEL:

PRICE: FINAL GOVERNMENT CONTRACTS ARE ALMOST ALWAYS IN FIXED PRICES. WITH FOREIGN CONTRACTORS, THE TUNISIAN GOVERNMENT INSISTS ON FIXED PRICE BIDS. WITH LOCAL CONTRACTORS THERE HAVE BEEN INSTANCES IN WHICH ESCALATION CLAUSES HAVE BEEN NEGOTIATED. IN THE CASE OF THE 300 MW STEAM POWER PLANT IN SOUSSE, THE ORIGINAL NEGOTIATION WAS ON THE BASIS OF 50 PERCENT FIXED PRICE AND 50 PERCENT WITH ESCALATION CLAUSE, BUT THE FINAL AGREEMENT WAS CONCLUDED ON 100 PERCENT FIXED PRICE. PRACTICE IN PRIVATE SECTOR DIFFERS FROM PUBLIC SECTOR IN THAT PRIVATE SECTOR DOES NOT FOLLOW STRICT RULES. THE BUYER CAN NEGOTIATE THE ENTIRE DEAL WITH THE SUPPLIER, BUT ALL PAYMENTS IN FOREIGN EXCHANGE MUST BE APPROVED BY THE CENTRAL BANK. ALL CONTRACTS MUST BE APPROVED BY APPROPRIATE GOVERNMENTAL AUTHORITIES TO BECOME VALID.

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3. BID AND PERFORMANCE BONDS: BID AND PERFORMANCE GUARANTEES MUST BE PAID IN CASH OR SURETY BONDS. BID BONDS CANNOT EXCEED ONE PERCENT OF THE PRESUMED CONTRACT PRICE. PERFORMANCE BONDS VARY BETWEEN 5 AND 10 PERCENT OF THE ESTIMATED VALUE OF THE CONTRACT. WHILE REQUIRED GUARANTEES ARE NOT UNIFORM AMONG ALL CONTRACTING AGENCIES OF THE GOVERNMENT, THE PERCENTAGE REQUIRED IN THE DOCUMENTATION IS RARELY NEGOTIABLE. BID AND

PERFORMANCE BOND REQUIREMENTS ARE NOT REDUCED WHEN CONTRACTOR IS IN JOINT VENTURE WITH LOCAL PARTNER. IMPORTED MACHINERY AND EQUIPMENT CANNOT BE CONSIDERED AS AN OFFSET AGAINST BONDS. SURETY BONDS ARE ACCEPTABLE IN TUNISIA.

3. FORCE MAJEURE: FORCE MAJEURE IS NORMALLY DEFINED AS A NATURAL DISASTER, E.G. EARTHQUAKE, FAMINE, CIVIL WAR. NEITHER LABOR DISPUTES NOR DELIVERY DELAYS DUE TO PORT CONGESTION ARE CONSIDERED CIRCUMSTANCES OF FORCE MAJEURE. EXCEPT IN VERY EXCEPTIONAL CASES, THERE IS NO SCOPE FOR NEGOTIATING LANGUAGE OF FORCE MAJEURE.

4. TRAINING: TENDERS FOR COMPLICATED EQUIPMENT USUALLY PROVIDE FOR TRAINING OF LOCAL PERSONNEL ON SITE IN TUNISIA. IN SOME CASES MIDDLE-LEVEL AND SUPERVISORY TECHNICIANS HAVE TO BE TRAINED IN SUPPLIER'S PLANT. TRAINING EQUIPMENT CAN BE IMPORTED AND REEXPORTED ON DUTY-FREE BASIS (TEMPORARY ADMISSION FOR SIX MONTHS, RENEWABLE). THE PERCENTAGE OF COST THE SUPPLIER IS EXPECTED TO BEAR IS SPECIFIED AS PART OF THE BID.

5. FOREIGN AND DOMESTIC WORKERS: IN GENERAL, CONTRACTORS ARE EXPECTED TO MAINTAIN A CERTAIN BALANCE OF LOCAL LABOR VIS-A-VIS FOREIGN LABOR (NO MORE THAN AROUND 40 PERCENT FOREIGN). IN SOME AREAS, THIS PROPORTION GOES UP TO 60 PERCENT - E.G. CONSULTING FIRMS. TUNISIA IS AN EXPORTER OF LABOR (TO EUROPE - FRANCE, WEST GERMANY, AND SOME ARAB COUNTRIES A E.G. LIBYA) AND HAS SUBSTANTIAL DOMESTIC UNEMPLOYMENT. THE BASIC LABOR SITUATION IS AS FOLLOWS:

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- UNSKILLED LABOR, READILY AVAILABLE?

- SEMI-SKILLED LABOR IN ADEQUATE QUANTITIES CAN BE LOCATED EASILY, AND IS TRAINABLE;

- SKILLED LABOR IN CERTAIN FIELDS, E.G. ELECTRICIANS, MECHANICS, CAN BE LOCATED ONLY WITH SOME DIFFICULTY AND AT HIGH WAGES FOR TUNISIA.

WAGES FOR SKILLED WORKERS (MECHANICS, CARPENTERS, BRICKLAYERS) INCLUDING ALL CHARGES ARE AROUND \$10-13 PER DAY BUT CAN BE NEGOTIATED. MINIMUM HOURLY WAGE RATE (SMIG) WAS RAISED AT THE BEGINNING OF THIS YEAR TO 193 MILLIMES (\$0.40), OR TD 40 PER MONTH (\$95) FOR A 48-HOUR WEEK. FOR EXPATRIATES, SUITABLE HOUSING, FOOD, CLOTHING, MEDICAL AND DENTAL CARE AND RECREATIONAL ACTIVITIES ARE AVAILABLE IN LARGE CITIES SUCH AS TUNIS, BIZERTE, SOUSSE, SFAX, GABES, DJERBA AND MONASTIR. THE CONTRACTOR NORMALLY PAYS A HOUSING AND A DISPLACEMENT

ALLOWANCE (SEE FACTSHEET ON LIVING AND WORKING IN TUNIS,
76 TUNIS A-091).

EXPATRIATE EMPLOYEES ARE SUBJECT TO LOCAL INCOME TAXES. PERSONAL EFFECTS NOT RPT NOT INCLUDING AN AUTOMOBILE ARE EXEMPT FROM IMPORT DUTIES. WORK AND RESIDENCE PERMITS ARE NOT CONSIDERED A PROBLEM FOR EMPLOYEES OF CONTRACTORS PERFORMING AUTHORIZED PROJECTS. THE MINISTRY OF SOCIAL AFFAIRS ISSUES THE PERMIT; A VISA FROM THE MINISTRY OF THE INTERIOR IS ALSO REQUIRED FOR EXTENDED PERIODS. CONTRACTORS SHOULD BE FAMILIAR WITH TUNISIAN LEGISLATION CONCERNING WORK RULES, WAGES AND TAXES. THERE ARE NO KOREAN, FILIPINO OR PAKISTANI WORKERS IN TUNISIA.

6. ARBITRATION: CONTRACTS PROVIDE FOR ARBITRATION, USUALLY UNDER TUNISIAN LAW IN TUNISIAN COURTS. INTERNATIONAL ARBITRATION MAY BE SPECIFIED. THE INTERNATIONAL CHAMBER OF COMMERCE IN GENEVA IS THE BODY TO WHICH DISPUTING PARTIES USUALLY REFER BUT ULTIMATE RE COURSE IS TO TUNISIAN COURTS.

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INFO OCT-01 NEA-10 ISO-00 /019 W
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R 130747Z APR 77
FM AMEMBASSY TUNIS
TO SECSTATE WASHDC 6396
INFO USDOC WASHDC

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7. LOCAL AGENTS AND REPRESENTATIVES:
LOCAL AGENTS AND REPRESENTATIVES ARE ALLOWED AND RECOMMENDED, ESPECIALLY WHERE COMPLICATED EQUIPMENT WILL REQUIRE AFTER-SALES SERVICE. COMMISSION AND FEES VARY ACCORDING TO NATURE AND COMPLEXITY OF CONTRACT, GENERALLY BETWEEN 0.5 PERCENT AND 5. PERCENT.

8. LOCAL PARTNERSHIPS/CORPORATIONS: PROS AND CONS OF
ESTABLISHING LOCAL PARTNERSHIP OR CORPORATION DEPEND UPON
TYPE OF VENTURE. SUCH A PARTNERSHIP IS
SUBJECT TO TUNISIAN BUSINESS TAXES FROM WHICH FOREIGN FIRMS
IN TUNISIA ARE OTHERWISE EXEMPT. IN GENERAL, PARTNERSHIP
MUST BE AT LEAST 51 PERCENT TUNISIAN.

9. GRADUATED OR ADVANCE PAYMENTS: ADVANCE PAYMENTS ARE
SPECIFIED IN TENDER DOCUMENTS. USUALLY, 20 PERCENT IS PAID
AT SIGNING OF CONTRACT, THEN, ACCORDING TO TIME NEEDED TO
IMPLEMENT PROJECT, TWO INSTALLMENTS OF 30 PERCENT EACH ARE
PAID AND REMAINING 20 PERCENT IS RETAINED AS GUARANTEE
THAT REQUIREMENTS SPECIFIED IN TENDER DOCUMENTS ARE MET.
THIS BALANCE IS PAID SIX MONTHS TO ONE YEAR AFTER
IMPLEMENTATION OF PROJECT.

10. LOCAL SUPPLY: GOT FAVORS CONTRACTORS WHO INCORPORATE LOCAL
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SOURCES IN THE BID, BUT THIS IS NOT A NECESSARY CONDITION.
LOCAL SUPPLY IS INCLUDED IN THE OVERALL CONTRACT. FOR DETAILS
ON ESCALATION, BID AND PERFORMANCE BONDS, FORCE MAJEURE, ETC.
SEE PARAGRAPHS 2 AND 3 ABOVE.

11. BONDED AREAS: NO "BONDED AREAS" HAVE BEEN ESTABLISHED TO
ELIMINATE DELAY IN PORT.

12. LANGUAGE AND UNITS OF MEASUREMENT: THE PREFERRED LANGUAGE
FOR BIDS IS FRENCH. IN SOME INSTANCES (TECHNICAL PROJECTS)
FRENCH IS REQUIRED. METRIC UNITS ARE REQUIRED BY LAW.

13. CORPORATE TAXES: FOREIGN CONTRACTORS ARE REQUIRED TO PAY
THE FOLLOWING TAXES: SERVICE TAX (TPS); REGISTRATION TAX;
TAXES ON SALARIES, WAGES AND PENSIONS; TAX ON EARNINGS.
A RESIDENT COMPANY WOULD ALSO PAY BUSINESS INCOME TAX.

14. MACHINERY AND EQUIPMENT: CUSTOMS DUTIES ARE WAIVED ON
MACHINERY, EQUIPMENT AND SUPPLIES IMPORTED FOR INVESTMENT PROJECTS
AGREED BY THE API (AGENCE DE PROMOTION DES INVESTISSEMENTS). OTHER
ARRANGEMENTS CAN BE NEGOTIATED WHERE GOODS ARE TO BE
REEXPORTED.
USED MACHINERY AND EQUIPMENT MAY BE SOLD LOCALLY PROVIDED CUSTOMS
DUTIES ARE PAID AND AUTHORIZATION FOR IMPORTATION IS OBTAINED.
SUPPLY OF SPARE PARTS FOR MACHINERY IS NEGOTIATED CASE BY CASE.

16. NEGOTIABLE CONTRACT CLAUSES: FINANCING, AFTER SALES
SERVICES, ARBITRATION WOULD BE NEGOTIABLE. MINIMUM WAGES
EXCHANGE, CONTROL, TAXATION ARE NOT NEGOTIABLE.

17. THE COMPLETION: U.S. COMPANIES SHOULD BE MADE AWARE OF THE FACT THAT THE TUNISIAN GOVERNMENT, AND PRIVATE TUNISIAN PURCHASERS OF HIGH VALUE GOODS AND/OR SERVICES PREFER FIXED PRICE BIDS AND FIXED INTEREST RATE FINANCING PACKAGES. FURTHERMORE, EUROPEAN COMPETITORS ARE USUALLY PREPARED TO QUOTE FIXED PRICES AND CAN USUALLY OFFER GOVERNMENT BACKED FIXED RATE CREDIT

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IF NECESSARY TO WIN A CONTRACT. HEAVY FRENCH INFLUENCE (IN THE FORM OF ADVISORS OR CONSULTANTS IN MANY GOVERNMENT MINISTRIES AND STATE CORPORATIONS) SKEWS CURVE TOWARD EUROPEAN SOURCES. DESPITE THESE PROBLEMS, U.S. COMPANIES HAVE BEEN SUCCESSFUL IN WINNING PROJECTS IN TUNISIA, USUALLY BY DISPLAYING GREAT PATIENCE AND DETERMINATION. JAPAN IS NOT A MAJOR ELEMENT IN THE TUNISIAN MARKET FOR THE MOMENT.

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
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Decapton Note:
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Executive Order: N/A
Errors: N/A
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From: TUNIS
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Litigation History:
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Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE A-5955
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 04-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2815695
Secure: OPEN
Status: NATIVE
Subject: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES IN TUNISIA
TAGS: BEXP, BENC, BGEN, TS
To: STATE
Type: TE
vdkgvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/4144b2a5-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009